(3)

(1)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Revision No. 457 of 2005

APPLICANT
[NON- APPLICANT]

Alok Agrawal son of Shri Govind Dasji Khajanchi, R/o Madhya Pradesh Electric Board, Near of Gadarwara, Gadarwara, Dist. Narsingpur[M.P.]

VERSUS

NON-APPLICANTS
[APPLICANTS]

1 Smt. Kalpana Agrawal wife of Shri Alok Agrawal , Address Near Madhya Pradesh Electricity Board Office, Gadarwara, Dist. Narsingpur.[M.P.]

2. Kumari Ashika Agrawal Daughter of Alok Agrawal, [miner] Aged about 2.5 years, Through: Natural ~~Guardian~~ Mother-Smt. Kalpana Agrawal, Presently Resident of Shri Baldau Prasad Agrawal, Near Panchmukhi Hanuman Mandir, Brahmarpara,Durg,Dist. Durg[C.G.]

8591/05
18/11/05
J.K. Gupta
Advocate

R to D.R. (J)
28/11/05

CRIMINAL REVISION UNDER SECTION 19[4] OF FAMILY COURTS ACT 1984

Being aggrieved dated 3.9.2005 passed by Shri H.R. Gurupanch Second Additional Chief Judge Family Court Durg C.G. in M.J.C. No. 360 of 2005 between Smt. Kalpana Agrawal and an other Versus Alok Agrawal, allowing the application under section 125 of Code of Criminal Procedure, thereby directing the applicant no. 1 at Rs. 1,500/- and applicant no.2 Rs. 500/- per month as maintenance is wrong and illegal hence this revision on the following facts and grounds:-

(40)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri **DILIP RAOSAHEB DESHMUKH, J.**

Criminal Revision No. 457/2005

Alok Agrawal

Vs.

Smt. Kalpana Agrawal and another

Post for Order: 12.05.06

Sd-/
Dilip Raosaheb Deshmukh
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri **DILIP RAOSAHEB DESHMUKH, J.**

Criminal Revision No. 457/2005

Alok Agrawal

Vs.

Smt. Kalpana Agrawal and another

PRESENT: -

Shri H.B.Agrawal, learned Senior Advocate with Shri Pankaj Agrawal, learned counsel for the applicant.
Shri Sudha Agrawal, learned counsel for the non-applicants.

ORDER
(Delivered on 12-05-2006)

This Criminal Revision is directed against the order dated 03-09-2005 passed by Shri H.R.Gurupanch, 2nd Additional Principal Judge, Family Court, Durg in M.J.C.Number-360/2005 whereby the maintenance @ Rs.1,500/- for the non-applicant No.1 wife and Rs.500/- for the non-applicant No.2 minor daughter was ordered to be paid from the date of order.

2. It is not disputed that the applicant Alok Agrawal was married to the non-applicant No.1 Kalpana Agrawal in the year 1999. Ku.Aashika Agrawal now aged about 6 years is their minor daughter. It is not disputed that the non-applicant No.1 had lodged a report at Police Station-Mahila Thana, Durg on 15-07-2003 against the applicant and his brother and parents on the allegations of harassment on account of a demand for dowry. It is also not disputed that the applicant has initiated proceedings under Section-13 of the Hindu Marriage Act for dissolution of marriage before the Additional District Judge, Gadarwada.

3. At the very outset, it would be proper to mention that on 09-05-2006 an effort was made by the Court to reconcile the dispute between the parties since the applicant had repeatedly expressed his readiness and willingness to take the non-applicants to their maternal home to his house and to maintain them properly. However, non-applicant No.1 was adamant in living separately since she apprehended threat to her life at the hands of her mother-in-law.

4. Brief facts are that the non-applicants filed an application under Section-125 of Cr.P.C. for grant of maintenance on the ground that the applicant and his family members were subjecting the non-applicant No.1 to cruelty physically as well as mentally on account of a demand for dowry. In the year-2000 when the non-applicant No.1 was ill, no proper treatment was given to her by the applicant, as a result of which brother of the non-applicant No.1 brought the non-applicants to Durg. Thereafter, the non-applicants were living at Durg at the maternal home. After the treatment was over, the applicant refused to take the non-applicants to their matrimonial home despite notice. The non-applicants were ready and willing to live with the applicant. The applicant runs a medical store and has an income of Rs.15,000/- per month therefrom. Maintenance @ Rs.3,000/- per month for each non-applicant was claimed.

5. The applicant herein refutted the allegations of non-applicants in toto on the ground that the non-applicant No.1 had refused to live with the applicant without any sufficient cause. It was further

contended that the applicant had no source of income, being unemployed. The Medical Store belonged to the elder brother of the applicant and the applicant did not derive any income therefrom. Partition has taken place in the joint family of the applicant. Both the parties adduced evidence before the Family Court and the non-applicant No.1 examined herself as AW-1 and her father Vallabh Prasad Agrawal as AW-2. The applicant herein filed an affidavit of himself and witnesses Praveen Kumar Gupta who were cross-examined by the counsel for the non-applicants.

6. Shri H.B.Agrawal, learned Senior Advocate for the applicant has at the very outset submitted that he would not impugn the finding of the Family Court granting maintenance @ Rs.500/- to Ku. Aashika Agrawal, minor daughter of the applicant and would confine his arguments only to the grant of maintenance to the non-applicant No.1 wife on the ground that the evidence led by the non-applicant No.1 clearly revealed that she did not want to live with her husband at her matrimonial home and wanted to live separately. It was also contended that the allegations of harassment of the non-applicant No.1 on account of a demand for dowry were clearly an afterthought since the report was lodged at Mahila Police Thana, Durg on 15-07-2003 i.e. almost a year and 7 months after the filing of an application under Section-125 of Cr.P.C. Upon refusal of the non-applicant No.1 to live with the applicant, the applicant had no other alternative but to file a petition under Section-13 of Hindu Marriage Act on 15-07-2004. On these grounds, it was prayed that

the impugned order so far as it relates to grant of maintenance @ Rs.1,500/- to the non-applicant No.1 wife should be set aside.

7. On the other hand, Smt. Sudha Agrawal, learned counsel for the non-applicants supported the impugned judgment while contending that the non-applicant No.1 had sufficient reason to refuse to live with her husband since she was repeatedly harassed on account of a demand for dowry eversince her marriage. It was argued that the report lodged by the non-applicant No.1 on 15-07-2003 at Police Station-Mahila Thana, Durg bears testimony to the above fact. The applicant had sufficient means to provide for her maintenance and the non-applicant No.1 was unable to maintain herself.

8. Having considered rival submissions, I have perused the record. In an application filed under Section-125 of Cr.P.C., the burden lies on the wife to prove that she has sufficient reason to refuse to live with her husband. In the application filed under Section-125 of Cr.P.C. at para-5, the non-applicants admitted that while the non-applicant No.1 was ill, her elder brother had visited Gadarwada and had brought the non-applicants to Durg for proper treatment. The testimony of Vallabh Prasad Agrawal also shows that on medical advice he had shifted the non-applicant No.1 from her matrimonial home to Durg. It is thus not a case where the non-applicant No.1 was thrown out of her matrimonial home. In this regard, non-applicant No.1 Smt. Kalapana Agrawal has admitted in cross examination that she would not take any medicine at her matrimonial home. She also used to shout on her husband since he would not stay

with her in the hospital at the time of delivery. She also admitted that her mother-in-law used to stay with her at the hospital. In para-10, she also admitted that for 2 to 3 days she used to confine herself inside her room since her mother-in-law would not permit her to enter the kitchen. In para-12, she also admitted that her mother-in-law had given her a golden necklace. The above facts clearly negate the allegations of ill-treatment of the non-applicant No.1 by the applicant or his family members.

9. No specific allegations were made by the non-applicant in her testimony regarding the harassment by the applicant on account of a demand for dowry. In para-6, she admitted that no report was lodged with the police regarding harassment on account of a demand for dowry till she lived with her husband. A copy of report available on record also shows that the report was lodged on 15-07-2003 i.e. almost a year and 7 months after the application under Section-125 of Cr.P.C. was filed. It appears that the report was nothing but an afterthought. The non-applicant No.1 further admitted in para-8 of her testimony that she was not willing to stay with the family of the applicant and wanted the applicant to live separately from his joint family. The above facts clearly go to show that the non-applicant had after returning to her maternal home, no sufficient reason to refuse to live with her husband. The adamant attitude of the non-applicant No.1 during the efforts of reconciliation by this Court also bears testimony to the above fact. So far as the attitude of the applicant is concerned, he had repeatedly expressed his readiness and willingness before this Court to take the non-applicants with him and

to maintain them. So far as the petition for the dissolution of marriage filed by the applicant is concerned, he repeatedly expressed his desire to withdraw the same if the non-applicant No.1 was willing to return and live with him. It is thus clear that the non-applicant No.1 had, without sufficient cause refused to live with her husband i.e. the applicant. Therefore, under sub clause-4 of Section-125 of Cr.P.C., the non-applicant No.1 was not entitled to receive any allowance from her husband for maintenance of herself. In this view of the matter, the impugned order so far as it relates to grant of maintenance @ Rs.1,500/- to the non-applicant No.1, is liable to be set aside.

10. In the result, this revision is partly allowed. The impugned order dated 03-09-2005 passed by the 2nd Additional Principle Judge, Family Court, Durg, so far as it relates to grant of maintenance @ 1,500/- per month to the non-applicant No.1 from the date of order, is set aside.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Satish